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State drops out of wine suit

Small operators can ship directly

By Alex Davis

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The Courier-Journal

Kentuckians can now order a case of their favorite wine by telephone or the Internet.

State regulators opened the door to shipments from small-farm wineries -- both inside and outside Kentucky -- when they unexpectedly decided to drop out of a federal lawsuit over the issue late last month.

The decision means that 43 licensed wineries in Kentucky are now able to ship wine to customers who place phone or online orders. Small wineries in other states will be eligible to do the same, but the state Office of Alcoholic Beverage Control hadn't received any applications for licenses as of yesterday.

To be considered for a shipping license, a winery must produce no more than 50,000

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gallons of wine annually.

Kentucky's wine-shipping laws have been the target of a lawsuit since May 2005. The case was launched by the Huber Orchard and Winery in Clark County, Ind., although the most recent plaintiff was Oregon-based Cherry Hill Vineyards.

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U.S. District Judge Charles R. Simpson III ruled in late December that a state law set to take effect Jan. 1 would be unconstitutional because it required a customer to visit a winery in person to order a shipment by mail. The theory was that Kentucky wineries would benefit unfairly from the in-person rule, because they are more accessible to the state's consumers than out-of-state operations.

Kentucky regulators previously argued that the shipments would allow residents to skirt the law in dry counties, and make it easier for minors to buy alcohol.

Nikki Ploskonka, a spokeswoman for the state Office of Alcoholic Beverage Control, said in an interview yesterday that the state decided to drop out of the case because Simpson's ruling upheld "almost all" of the challenged portions of the new law.

Steve Humphress, attorney for the office of Alcoholic Beverage Control, had predicted that the state would appeal. In a late-December interview, he described Simpson's ruling as a "pretty big modification" of the state's alcohol laws.

While the state has dropped out of the case, an appeal has been filed by a co-defendant, the Wine and Spirits Wholesalers of Kentucky. Dan Meyer, an attorney for the group and its executive director, said he was "somewhat disappointed" that the state is not pursuing the case further.

The seven members of the wholesalers group stand to lose business if they are bypassed by direct shipments, but Meyer said they will not seek to prevent the shipments into and out of Kentucky while the appeal is being heard.

Chuck Smith, co-owner of the Smith-Berry Winery in New Castle, Ky., applauded the state's decision to drop out of the case. He said his business, which makes about 6,000 gallons of wine annually, has received calls in the last couple of weeks from people in South Carolina, Virginia and Kansas curious about ordering wine.

Although no shipments have been made, Smith, president of the Kentucky Vineyard Society, said he is looking into taking out-of-state orders in the future.

"Any sales are good," he said. "There are a lot of people who want to take wine back, but they can't carry it on a plane."

At the Combs Ferry Winery just outside Lexington, co-owner Harkey Edwards predicted that the issue will be more significant for wineries several years from now, after shipping channels are more established.

"The volume is the question," Edwards said. "It's more a victory for the consumers than for the wineries."

In a related matter, the plaintiffs' lawyers in the lawsuit are seeking \$205,048 in attorney fees. A Jan. 24 request for the fees names both the state and the wholesalers, although Meyer said his group has no plans to cover any of the costs. The largest request came from James Tanford, a law professor at Indiana University in Bloomington seeking more than \$80,000, including \$400 an hour for legal work and \$100 an hour for travel.

Tanford said there will be "a huge amount of room for judicial discretion" in the amount of fees actually awarded, partly because the court ruled for the state in some parts of the case.

Tanford has worked on wine-shipping suits in 16 other states, and he said the



Kentucky case was the only one in which a state government hired outside legal counsel to assist with its defense.

Ploskonka said the private firms that helped the state have not yet made their requests for payment.

Reporter Alex Davis can be reached at (502) 582-4644.

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